

SUPREME COURT OPINION

Lower Court Reversed in Maynard vs. Engineers' Insurance Association.

PLAINTIFF MAY RECOVER

IF THE COMPLAINT IS PROPERLY AMENDED.

Rulings of an Unfavorable Nature to the Plaintiff in Bowman vs. the City and County—Judge Miles Takes Under Adversement Question of Remuneration of the Receivers of the Bank of Salt Lake—Ex-Road Supervisor Kilgore Arrested.

An opinion, written by Justice Barich and concurred in by Chief Justice Zane and Justice Miner, was handed down in the supreme court in the case of Charles Maynard vs. Locomotive Engineers' Mutual and Accident Insurance association, appellant. The judgment of the lower court was reversed and the cause remanded with directions to the court below to grant a new trial and permit the parties to amend their pleadings if they so desire.

The plaintiff was a member of the defendant corporation and sought action to recover \$5,000 on two certificates of membership, in the nature of insurance policies, each for \$1,500 for the permanent loss of the right eye of the plaintiff. The cause was tried by the district court without a jury, judgment entered in favor of the plaintiff, a new trial refused and thereupon the defendant appealed.

The only assignment of error which the supreme court deemed necessary to consider was the one to the effect that the judgment of the court is not supported by the findings of fact. The court below found that the defendant was incorporated March 1, 1894, and for 25 years prior thereto had existed as a legal entity, and that when it incorporated it assumed all the liabilities of the unincorporated association; that the plaintiff received the injury in June, 1935, but the loss of his eye did not become permanent until 12 months after, and that plaintiff founded his cause of action on a by-law passed by the incorporated association on May 25, 1935, to the effect that any member who was engaged in any lawful vocation receiving injuries causing the permanent and total loss of one or both eyes shall receive the whole amount of his policy.

The opinion held that this by-law was not retroactive and prospective merely. "It is true, however," says the opinion, "the court found that previous to its incorporation the defendant had a by-law that any member while engaged in a lawful vocation, receiving bodily injuries which alone shall cause the total and permanent loss of eyesight shall receive the full amount of his policy. This is a fact found on the record and is not in dispute. It is a fact which cannot be considered as supporting the judgment, because facts in issue need not be found, and it is found in the finding in the opinion, and it is not in dispute."

While it is evident the facts do not support the judgment and that it cannot stand, still we are not satisfied that the respondent cannot ultimately recover the amount of his policy if the complaint be carefully revised by amendments, so as to present the issues, suggested by the record, in a proper manner.

BOWMAN CASE. Rulings Which Appear Unfavorable to the Plaintiff. The taking of testimony in the case of J. H. Bowman against Salt Lake City and county was resumed yesterday morning before Judge Cherry and a jury.

The case opened by counsel for the plaintiff called to the witness stand Architect Kern. It is Bowman's intention to prove by the testimony of Kern, that the building which is the subject of the contract, was not fair estimates. County Attorney Van Cott, on behalf of the county, objected to the taking of Kern's testimony on the ground that it would be incompetent, contending that the question of value was controlled by the architect's estimate. The plaintiff's counsel contended that the question of value was not controlled by the architect's estimate, but that the plaintiff could not go outside of the record; that the question of value should have been made at the time they were furnished. The question was argued at considerable length and his honor sustained the objection, and is quite a blow to the hopes of the plaintiff, as it cannot go behind the estimates he will have great difficulty in proving his case.

Kern was on the stand when court adjourned until this morning.

BANK OF SALT LAKE RECEIVERS Question of Compensation Argued and Taken Under Adversement. Judge Miles yesterday morning resumed the hearing in the matter of the receivers of the Bank of Salt Lake and the First Bank of Mercur, Messrs. C. C. Dey, C. S. Varian and C. W. Bennett were examined and expressed the opinion that \$10,000 would be a reasonable compensation. His honor took the matter under advisement and also the matter of authorizing the transfer to H. H. Rea of the assets of the banks, purchased by him.

KILGORE ARRESTED. On an Indictment Charging Him With Embezzlement.

Ex-Road Supervisor George Kilgore, who was indicted by the grand jury for embezzlement last November, was arrested yesterday at Murray by Deputy Sheriff Hansen and taken before Judge Sommer, who was authorized by the district court to approve Kilgore's bond in the sum of \$1,000 for his appearance for trial. At last accounts the accused was looking for bondsmen.

The charge against Kilgore is that when he held the position of road supervisor, he received money from the county to pay men working under him and appropriated about \$100 of it to his own use. The men to whom the money is owing are the complaining witnesses.

Divorce Granted. Arthur G. Burritt was granted a decree of divorce from Ida L. Burritt by Judge Cherry on the grounds of desertion.

Two parties intermarried at Lima, O., on November 3, 1886, and in 1894 the defendant, without any apparent cause, deserted the plaintiff and has refused to return to live with him.

Federal Court. Orders were made as follows in the federal court by Judge John A. Marshall yesterday:

Samuel M. Jarvis and R. R. Conklin vs. Lands Trust company, Ltd.; petition for permission to take depositions of witnesses at Salt Lake City, Utah.

On motion of P. L. Williams, attorney for the plaintiff, to set aside the verdict in the case of the plaintiff vs. the defendant, and grant a new trial.

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ney, F. C. Loomis, was admitted to the bar of the United States circuit and district courts.

Marcus U. Towle vs. the American Building Loan & Investment company; receiver appointed as prayed in union with the circuit court in other circuits.

United States vs. Horace S. Campbell et al.; two cases, branch of mail contract; dismissed.

United States vs. George C. Kidder et al.; two cases, unlawful cutting of timber; dismissed.

Court Notes and Short Orders.

All petit jurors not on the panel to try the Bowman case against the city were excused until Thursday morning. Judge Norrell, who has returned from holding court at Coalville, is expected to sit in his division of the district court today.

Employment company vs. E. A. Swenson et al.; motion to vacate judgment as to S. J. Stokely denied.

Board of education vs. John Bryan et al.; motion for a new trial sustained.

Castle vs. Castle; dismissed at plaintiff's cost.

Arion Keyser vs. Elenda A. Lawrence et al.; judgment and decree of foreclosure, the plaintiff by default.

N. A. Bailey vs. Douglas A. Shiley et al.; judgment for plaintiff by default.

F. W. Ross vs. Ingersoll et al.; ten days' additional time allowed to answer.

The U. S. Gov't Reports show Royal Baking Powder superior to all others.

METEOROLOGICAL RECORD.

Yesterday's Observations at the Local Weather Bureau Office.

Salt Lake City, March 8.—Thermometer, 6 a. m., 21; noon, 32; 6 p. m., 25; relative humidity (per cent), 6 a. m., 80; 6 p. m., 73; state of weather, 6 a. m., clear; 6 p. m., clear; maximum temperature, 36 degrees; minimum temperature, 21 degrees; average temperature, 28 degrees; for 17 years, 40 degrees; deficiency for this date, 12 degrees; accumulated deficiency since Jan. 1, 1897, 112 degrees; accumulated deficiency since March 1, 1897, 30 degrees; rainfall, 15 inches; mean daily for 22 years, .06 inches; excess for this date, .09 inches; accumulated excess of rain since Jan. 1, 1897, 3.21 inches; accumulated excess of rainfall since March 1, 1897, .53 inches.

Forecast—For Salt Lake City and vicinity for the 24 hours ending 6 p. m. today: Fair, stationary, with clouds.

Observer: J. H. SMITH.

Taken in Time.

even consumption yields to the wonderful effects of Dr. Cassen's Medical Discovery. It won't make new lungs—but it will make diseased ones healthy when nothing else will. There's reason for it, too. Consumption is lung disease, and every form of scrofula, and all blood-taints, the "Discovery" is a positive cure. It's the most potent strength-restorer, blood-cleanser, and flesh-builder known to modern medicine. For weak lungs, spitting of blood, bronchitis, asthma, catarrh, and all lingering coughs, it's an unequalled remedy.

AMUSEMENTS

The heavy drain on the pockets of our theatergoers last week told on two of three of the places of amusement last evening. "Chimne Fadden" played to a fair house only at the theater, but it must be said, one better than the management looked for, so closely following upon the heels of the Davenport engagement; and the Grand held the regulation light Monday night gathering, and the masses concentrated themselves upon the Lyceum.

AT THE THEATRE.—"Chimne Fadden" is undoubtedly the best show of its kind the town has ever seen. The troupe is made up of the best of the kind, and it is one prolonged carnival of slang, bawdy, and mixed in which is a great deal of undeniable wit and drollery. The people are all good, and the show is a good one. The people are all good, and the show is a good one. The people are all good, and the show is a good one.

AT THE LYCEUM.—A pot of money spent in advertising crammed the house last evening, and secured for Ferguson & Emerick's variety show, sailing under the name of "McSorley's Twins," an enthusiastic reception. The two star comedians, most of the fun, and the attainments of the remainder of the company are limited to lively dancing and singing; beyond that they might be called light-voiced. Ferguson & Emerick's "Clancy" kept the house, and the upper part of it especially, in an uproar. The show runs three nights more.

Miss Izett enjoyed "The Premier's Daughter" from the front last evening.

The New York papers of Tuesday last state that Nordica had engaged to sing Wagnerian roles with the Damrosch Opera company, commencing last evening. After filling out a month's engagement, which she probably accepted as much to hurt Grau as for the money, she will proceed to London and report for duty at Grau's Covent Garden theater in accordance with her contract. Grau will refuse to fill the contract and a big damage suit will result.

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NEWS FROM NEARBY

Progressive Citizens Hold a Meeting at Provo.

THEY FAVOR THE R. G. W.

ONE MOSSBACK TAKES A LOOK AND FLEES.

Mr. Barney Sensibly Reviews the Situation, and Shows How Other Towns Have Secured Many Things That Provo Could Have Had—S. S. Jones of the Opinion That the Garden City Has Been Going Backward When It Should Have Been Advancing.

Provo, March 8.—Several attorneys from Salt Lake and local legal lights were conspicuous about the court room this morning, awaiting the appearance of Judge Dusenberry, who was delayed on account of heavy snow.

In the meantime Referee Charles De Moisey opened court and rendered a decision in the case of Provo vs. the several irrigation companies. A motion for non-suit had been made by Booth & Wilson and also by Saxey & Edwards on grounds that the case was a matter of individual trespass if there was any case at all. The judge took a similar view and granted the non-suit, which virtually disposes of the case, as the same motion will be made by all other defendants. It is contemplated that an appeal will be taken.

PROGRESSIVE CITIZENS MEET.

An enthusiastic meeting was held by prominent citizens of Provo, and Mr. Jones took the position that this morning at the office of King & Gash. S. S. Jones was made chairman and H. S. Martin secretary.

Mr. Jones, who is president of the chamber of commerce, made some fitting remarks on the question of railroads and grants. The speaker complimented the Rio Grande Western railway for their recent enterprise, and believed the present proposition was something more than a bluff. He was convinced that they were in dead earnest in their intention to make the Park City extension a reality, which would be of immense benefit to this city and surrounding towns.

Coming to the matter of granting a right of way through H. or Pacific street, Mr. Jones said that it would be advisable to give the railway company H. street or even J street if they desire. "Provo has been going back instead of forward," he said. "There is a glim in our future, let us take advantage of it," he said.

Mr. Barney reviewed the situation, showing some of the past mistakes made by our city in keeping out improvements contemplated by the Rio Grande Western, notably a fine depot, railroad shops, junction of the Tintic branch, etc., all of which would have been realized had we not people done their duty. He stated that it was his opinion that one false move on the part of Provo citizens would be of infinite damage.

Mr. Barney's speech was well received and the meeting adjourned until the next meeting of the Progressive Citizens.

WASHINGTON, March 8.—Japan is the next nation which will furnish the battle ground for a contest between the advocates of gold and silver standards. The report has been recently printed that the Japanese government had adopted the gold standard, but this proves to be incorrect. Official cables received from Tokyo today state that the ministry has formulated a bill for the adoption of the gold standard, and that on the 2nd inst. this measure was introduced in the house of representatives.

The introduction of the measure no more foreshadows its successful passage by the diet than would be the case in the American congress. The bill also proposes that the free coinage of silver shall cease from October 1 of the present year if the measure becomes law.

It is understood that the proposed financial legislation will create strong opposition in the diet. More than a year ago a commission was formed to study the number of gentlemen prominent in the official, financial and mercantile world to report on the advisability of changing the standard of value. The only effect of their conference was to emphasize the widely divergent views entertained by the several members, and the commission adjourned without reaching a definite conclusion. Some of the members strongly urged the continued free coinage of silver at 16 to 1; some recommended a ratio of 22 to 1, while others stoutly affirmed their belief in a gold standard.

It is predicted that the contest in the diet will not only be a spirited one, but grave doubts are expressed as to the possible success of the measure.

CITY COUNCIL.

An amended petition was presented to the city council this evening by the citizens of Provo, Utah, in which they ask a right of way through H. street. The committee on railroads and telegraph were prepared to report favorably upon the original petition, but the committee on public works and streets reported against it. The committee on public works and streets reported against it.

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TO GROCERS WHO ARE IN BUSINESS TO STAY:

What makes people buy of you? What makes you buy what you buy yourself?

Confidence—mostly.

Good tea at a fair price will give you the confidence of your customers, as far as tea is concerned. And really you can't deny that *Schilling's Best* is the best money's-worth of tea.

A Schilling & Company, San Francisco

TOOELE COUNTY.

A Bank to Be Established at Tooele City—Other Improvements.

Tooele City, March 8.—We are just now enjoying the sequel to the three day's blow, which prevailed last week, and our citizens are proclaiming that the troops did credit to themselves and to the generalship of spring time.

The funeral of John Drexler was held at 2 o'clock p. m. today.

Our merchant prince, P. A. Droubay, intends to start a bank here. Success P. A.

Among the new ventures in Tooele are a tailor shop by Charles Bollich and a shoe factory by John Lindberg.

On Saturday night our Home Dramatic troupe presented the modern drama, "My Pardner," a fairly good success. The troupe did credit to themselves and justice to the piece. The audience were well pleased and wish the troupe to continue their good work.

It was notified that a number of ladies from the high hat bill has received the signature of Governor Wells, and is now the law.

On Sunday next the high priests, seantes and elders are going to indulge in a picnic and ball in the evening. In the afternoon a programme will be rendered.

Bogan Stock Sold.

Park City, March 8.—A delinquent assessment sale of Bogan stock was held this afternoon, when 2,700 shares were sold at prices varying from 6 1/2 to 10 cents each.

By R. E. Watson, treasurer of the company. Not so many shares were sold as anticipated, which shows that the people have faith in this Bogan property.

NOT ON A GOLD BASIS.

JAPAN A BATTLEGROUND FOR BIMETALLISM.

Ministry Has Formulated a Bill for the Adoption of a Gold Standard, But That Does Not in Any Way Mean That It Will Be Successful.

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OGDEN BUREAU.

Business and Editorial Office 519 Utah Loan & Trust Building. Telephone 208.

Ogden, March 9.

WANT TO HOLD OVER.

Rich and Parker Will Contest For Emoluments—Routine County Business.

The board of county commissioners were in session most of the day yesterday.

The petition of Fred L. Foy relating to reimbursement for a complicated and erroneous tax sale was reported on by the petition committee.

Washington Jenkins appeared before the board and urged for leave of absence as county surveyor. No action was taken.

Chas. R. Bovey ap. applied for the position of fruit tree inspector.

Dr. E. C. Rich and Charles Parker, respectively ex-county physician and health superintendent of the poor farm, each sent in a communication notifying the board that they denied the board's right to remove them from their positions, and that they were ready to perform their duties and receive the emoluments of said offices.

No action was taken on the communications. Tax sale matters were adjourned for W. W. Wallace and David Byrne. The report of tax sales for 1896 was accepted and the auditor instructed to credit the tax collector with the county tax alone, the credit to be subject to changes for errors if any are discovered.

The county attorney was asked for an opinion as to the power of the board to assign a tax sale to any party except one who is interested in the property. Assessor Brown's appointments of William Jackson and Moroni Brown as deputies were confirmed.

John M. Stoddard's bond as road supervisor of Hooper was approved, and Joseph Casler of North Ogden was required to file a new bond.

Thomas and George were appointed constables of Marriott.

PEARSON ACQUITTED.

Brodine Weakened—Oratory in Court—A Peculiar Case.

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